

AMENDED IN SENATE JUNE 29, 2006

AMENDED IN ASSEMBLY JANUARY 26, 2006

AMENDED IN ASSEMBLY JUNE 13, 2005

AMENDED IN ASSEMBLY JUNE 1, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1029

Introduced by Assembly Member Jerome Horton

February 22, 2005

An act to amend ~~Section 15604 of the Government Code, relating to the State Board of Equalization.~~ *Sections 64, 480.2, 483, and 532 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1029, as amended, Jerome Horton. ~~The State Board of Equalization: personnel process.~~ *Property taxation.*

The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, "full cash value" is defined as the assessor's valuation of real property as shown on the 1975–76 tax bill under "full cash value" or, thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. Existing property tax law specifies those circumstances in which the transfer of ownership interests in a corporation, partnership, limited liability company, or other legal entity results in a change in ownership of the real property owned by that entity, and requires a person or entity that obtains a controlling

or majority ownership interest in a legal entity, or an entity that makes specified transfers of ownership interests in the legal entity, to file a change in ownership statement, as specified, with the State Board of Equalization within 45 days of specified transactions, or whenever requested by the board. Existing law imposes a penalty of 10% of the taxes owed to the county on a parcel of real property if an assessee fails to file a change in ownership statement with the board within 45 days of a board request.

This bill would modify the provisions of that statement to specify that the county assessor shall estimate the value of, and reassess, the real property owned by an entity in its jurisdiction if the entity fails to respond to a county assessor's request for information and the assessor has information that a change in ownership has occurred, as specified. This bill would also authorize a county board of supervisors to abate, and to authorize the county assessor to abate, the 10% penalty if the failure to file the change in ownership statement within the prescribed time period was due to reasonable cause, the person or legal entity has subsequently filed a change of ownership statement with the State Board of Equalization, as provided, and the person or legal entity has filed with the county board of supervisors a written application for abatement of the penalty no later than 60 days after the date on which the person or legal entity was notified of the penalty, as provided. This bill would also define "reasonable cause" for purposes of these provisions.

Existing law requires the Franchise Tax Board to include specified questions on the income tax returns of specified entities regarding changes in ownership of the real property owned by the entity and requires the Franchise Tax Board to notify the State Board of Equalization if an entity answers "yes" to these questions.

This bill would delete the specified questions and would instead require the Franchise Tax Board to include general questions on these income tax returns asking whether a change in control or change in ownership has occurred and whether the entity owns real property in the state.

Existing property tax law provides for escape assessments to be made on property outside the regular assessment period and requires that certain notices, in a form prescribed by the State Board of Equalization, of those assessments be given to assessees.

This bill would clarify that, in the case where property has escaped taxation, in whole or in part, or has been underassessed, following a

change in ownership or change in control, as provided, an escape assessment may be made for each year in which the property escaped taxation or was underassessed, if a change in ownership statement, as required, was not filed within 45 days of a written request by the State Board of Equalization.

This bill would declare that it is to take effect immediately as an urgency statute.

~~The California Constitution establishes the State Board of Equalization consisting of the Controller and 4 members elected to 4-year terms at gubernatorial elections. Existing law authorizes the board to appoint its secretary who holds office at the pleasure of the board.~~

~~This bill would prohibit the board from participating in the personnel process, except as specified.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 64 of the Revenue and Taxation Code is*
2 *amended to read:*

3 64. (a) Except as provided in subdivision (i) of Section 61
4 and subdivisions (c) and (d) of this section, the purchase or
5 transfer of ownership interests in legal entities, such as corporate
6 stock or partnership or limited liability company interests, shall
7 not be deemed to constitute a transfer of the real property of the
8 legal entity. This subdivision is applicable to the purchase or
9 transfer of ownership interests in a partnership without regard to
10 whether it is a continuing or a dissolved partnership.

11 (b) Any corporate reorganization, where all of the corporations
12 involved are members of an affiliated group, and that qualifies as
13 a reorganization under Section 368 of the United States Internal
14 Revenue Code and that is accepted as a nontaxable event by
15 similar California statutes, or any transfer of real property among
16 members of an affiliated group, or any reorganization of farm
17 credit institutions pursuant to the federal Farm Credit Act of
18 1971 (Public Law 92-181), as amended, shall not be a change of
19 ownership. The taxpayer shall furnish proof, under penalty of
20 perjury, to the assessor that the transfer meets the requirements of
21 this subdivision.

1 For purposes of this subdivision, “affiliated group” means one
2 or more chains of corporations connected through stock
3 ownership with a common parent corporation if both of the
4 following conditions are met:

5 (1) One hundred percent of the voting stock, exclusive of any
6 share owned by directors, of each of the corporations, except the
7 parent corporation, is owned by one or more of the other
8 corporations.

9 (2) The common parent corporation owns, directly, 100
10 percent of the voting stock, exclusive of any shares owned by
11 directors, of at least one of the other corporations.

12 (c) (1) When a corporation, partnership, limited liability
13 company, other legal entity, or any other person obtains control
14 through direct or indirect ownership or control of more than 50
15 percent of the voting stock of any corporation, or obtains a
16 majority ownership interest in any partnership, limited liability
17 company, or other legal entity through the purchase or transfer of
18 corporate stock, partnership, or limited liability company interest,
19 or ownership interests in other legal entities, including any
20 purchase or transfer of 50 percent or less of the ownership
21 interest through which control or a majority ownership interest is
22 obtained, the purchase or transfer of that stock or other interest
23 shall be a change of ownership of the real property owned by the
24 corporation, partnership, limited liability company, or other legal
25 entity in which the controlling interest is obtained.

26 (2) On or after January 1, 1996, when an owner of a majority
27 ownership interest in any partnership obtains all of the remaining
28 ownership interests in that partnership or otherwise becomes the
29 sole partner, the purchase or transfer of the minority interests,
30 subject to the appropriate application of the step-transaction
31 doctrine, shall not be a change in ownership of the real property
32 owned by the partnership.

33 (d) If property is transferred on or after March 1, 1975, to a
34 legal entity in a transaction excluded from change in ownership
35 by paragraph (2) of subdivision (a) of Section 62, then the
36 persons holding ownership interests in that legal entity
37 immediately after the transfer shall be considered the “original
38 coowners.” Whenever shares or other ownership interests
39 representing cumulatively more than 50 percent of the total
40 interests in the entity are transferred by any of the original

1 coowners in one or more transactions, a change in ownership of
2 that real property owned by the legal entity shall have occurred,
3 and the property that was previously excluded from change in
4 ownership under the provisions of paragraph (2) of subdivision
5 (a) of Section 62 shall be reappraised.

6 The date of reappraisal shall be the date of the transfer of the
7 ownership interest representing individually or cumulatively
8 more than 50 percent of the interests in the entity.

9 A transfer of shares or other ownership interests that results in
10 a change in control of a corporation, partnership, limited liability
11 company, or any other legal entity is subject to reappraisal as
12 provided in subdivision (c) rather than this subdivision.

13 (e) (1) To assist in the determination of whether a change of
14 ownership has occurred under subdivisions (c) and (d), the
15 Franchise Tax Board shall include a question ~~in substantially the~~
16 ~~following form~~ on returns for partnerships, banks, and
17 corporations (except tax-exempt organizations): *organizations*
18 *asking (A) if a change in control or a change in ownership, as*
19 *described in this section, of the entity has occurred, and (B) if the*
20 *entity owns real property in California.*

21 ~~If the corporation (or partnership or limited liability company)~~
22 ~~owns real property in California, has cumulatively more than 50~~
23 ~~percent of the voting stock (or more than 50 percent of total~~
24 ~~interest in both partnership or limited liability company capital~~
25 ~~and partnership or limited liability company profits) (1) been~~
26 ~~transferred by the corporation (or partnership or limited liability~~
27 ~~company) since March 1, 1975, or (2) been acquired by another~~
28 ~~legal entity or person during the year? (See instructions.)~~

29 If

30 (2) ~~If the entity answers "yes" to (1) or (2) in the above~~
31 ~~question responds affirmatively to either of the questions~~
32 ~~described in paragraph (1), then the Franchise Tax Board shall~~
33 ~~furnish the names and addresses of that entity and of the stock or~~
34 ~~partnership or limited liability company ownership interest~~
35 ~~transferees to the State Board of Equalization.~~

36 SEC. 2. *Section 480.2 of the Revenue and Taxation Code is*
37 *amended to read:*

38 480.2. (a) Whenever there is a change in ownership of any
39 corporation, partnership, limited liability company, or other legal
40 entity, as defined in subdivision (d) of Section 64, a signed

1 change in ownership statement as provided in subdivision (b)
2 shall be filed by such corporation, partnership, limited liability
3 company, or other legal entity with the board at its office in
4 Sacramento. The statement shall list all counties in which the
5 corporation, partnership, limited liability company, or legal entity
6 owns real property.

7 (b) The change in ownership statement required pursuant to
8 subdivision (a) shall be declared to be true and under penalty of
9 perjury and shall give such information relative to the ownership
10 interest acquisition transaction as the board shall prescribe after
11 consultation with the California Assessors' Association. The
12 information shall include, but not be limited to, a description of
13 the property owned by the corporation, partnership, limited
14 liability company, or other legal entity, the parties to the
15 transaction, the date of the ownership interest acquisition, and a
16 listing of the "original coowners" of the corporation, partnership,
17 limited liability company, or other legal entity prior to the
18 transaction. The change in ownership statement shall not include
19 any question which is not germane to the assessment function.
20 The statement shall contain a notice that is printed, with the title
21 in at least 12-point boldface type and the body in at least 8-point
22 boldface type, in the following form:

23
24 "Important Notice"

25
26 "The law requires any corporation, partnership, limited liability
27 company, or other legal entity owning real property in California
28 subject to local property taxation and transferring shares or other
29 ownership interest in such legal entity which constitute a change
30 in ownership pursuant to subdivision (d) of Section 64 of the
31 Revenue and Taxation Code to complete and file a change in
32 ownership statement with the State Board of Equalization at its
33 office in Sacramento. The change in ownership statement must
34 be filed within 45 days from the date that shares or other
35 ownership interests representing cumulatively more than 50
36 percent of the total control or ownership interests in the entity are
37 transferred by any of the original coowners in one or more
38 transactions. The law further requires that a change in ownership
39 statement be completed and filed whenever a written request is
40 made therefor by the State Board of Equalization, regardless of

1 whether a change in ownership of the legal entity has occurred.
2 The failure to file a change in ownership statement within 45
3 days from the date of a written request by the Board of
4 Equalization results in a penalty of 10 percent of the taxes
5 applicable to the new base year value reflecting the change in
6 ownership of the real property owned by the corporation,
7 partnership, limited liability company, or legal entity (or 10
8 percent of the current year's taxes on that real property if no
9 change in ownership occurred). This penalty will be added to the
10 assessment roll and shall be collected like any other delinquent
11 property taxes, and be subject to the same penalties for
12 ~~nonpayment.~~ *nonpayment. If, after written request by the*
13 *assessor, the corporation, partnership, limited liability company,*
14 *or other legal entity, required by law to file the change in*
15 *ownership statement, fails to comply with any law for furnishing*
16 *required information and the assessor has information that a*
17 *change in ownership has occurred, the assessor, based upon*
18 *information in his or her possession, shall estimate the value of*
19 *the property and, based upon this estimate, promptly assess the*
20 *property."*

21 (c) In the case of a corporation, the change in ownership
22 statement shall be signed either by an officer of the corporation
23 or an employee or agent who has been designated in writing by
24 the board of directors to sign such statements on behalf of the
25 corporation. In the case of a partnership, limited liability
26 company, or other legal entity, the statement shall be signed by
27 an officer, partner, manager, or an employee or agent who has
28 been designated in writing by the partnership, limited liability
29 company, or legal entity.

30 (d) No person or entity acting for or on behalf of the parties to
31 a transfer of real property shall incur liability for the
32 consequences of assistance rendered to the transferee in
33 preparation of any change in ownership statement, and no action
34 may be brought or maintained against any such person or entity
35 as a result of such assistance.

36 Nothing in this section shall create a duty, either directly or by
37 implication, that such assistance be rendered by any person or
38 entity acting for or on behalf of parties to a transfer of real
39 property.

(e) The board or assessors may inspect any and all records and documents of a corporation, partnership, limited liability company, or legal entity to ascertain whether a change in ownership as defined in subdivision (d) of Section 64 has occurred. The corporation, partnership, limited liability company, or legal entity shall upon request, make such documents available to the board during normal business hours.

SEC. 3. Section 483 of the Revenue and Taxation Code is amended to read:

483. (a) (1) If the assessee establishes to the satisfaction of the county board of supervisors that the failure to file the change in ownership statement within the time required by subdivision (a) of Section 482 was due to reasonable cause and not due to willful neglect, and has filed the statement with the assessor, the board of supervisors may order the penalty abated, provided the assessee has filed with the board of supervisors a written application for abatement of the penalty no later than 60 days after the date on which the assessee was notified of the penalty.

If

(2) If the penalty is abated it shall be canceled or refunded in the same manner as an amount of tax erroneously charged or collected.

(b) (1) The provisions of subdivision (a) shall not apply in any county in which the board of supervisors adopts a resolution to that effect. In that county the penalty provided for in subdivision (a) of Section 482 shall be abated if the assessee files the change of ownership statement with the assessor no later than 60 days after the date on which the assessee was notified of the penalty.

If

(2) If the penalty is abated it shall be canceled or refunded in the same manner as an amount of tax erroneously charged or collected.

(c) (1) If a person or legal entity establishes to the satisfaction of the county board of supervisors that the failure to file the change in ownership statement within the time required by subdivision (b) of Section 482 was due to reasonable cause and not due to willful neglect, and has filed the statement with the board, the board may recommend to State Board of Equalization, the county board of supervisors may order that the penalty be abated, provided the person or legal entity has filed with the

1 *county board of supervisors a written application for abatement*
2 *of the penalty no later than 60 days after the date on which the*
3 *person or legal entity was notified of the penalty pursuant to*
4 *Section 534.*

5 *(2) A county board of supervisors may adopt an ordinance or*
6 *resolution authorizing the assessor to abate the penalty provided*
7 *for in subdivision (b) of Section 482.*

8 ~~If~~

9 *(3) If the penalty is abated by the board of supervisors, it shall*
10 *be canceled or refunded in the same manner as an amount of tax*
11 *erroneously charged or collected.*

12 *(d) For purposes of this section, "reasonable cause" includes,*
13 *but is not limited to, all of the following:*

14 *(1) The occurrence of an emergency, as described in Section*
15 *8558 of the Government Code, that caused the person's failure to*
16 *make a timely remittance.*

17 *(2) A natural disaster or other catastrophe directly affecting*
18 *the business operations of the person that caused the person's*
19 *failure to make a timely remittance.*

20 *(3) The State Board of Equalization failed to send returns or*
21 *other information to the correct address of record, that caused*
22 *the person's failure to make a timely remittance.*

23 *SEC. 4. Section 532 of the Revenue and Taxation Code is*
24 *amended to read:*

25 *532. (a) Except as provided in subdivision (b), any*
26 *assessment made pursuant to either Article 3 (commencing with*
27 *Section 501) or this article shall be made within four years after*
28 *July 1 of the assessment year in which the property escaped*
29 *taxation or was underassessed.*

30 *(b) (1) Any assessment to which the penalty provided for in*
31 *Section 504 must be added shall be made within eight years after*
32 *July 1 of the assessment year in which the property escaped*
33 *taxation or was underassessed.*

34 *(2) Any assessment resulting from an unrecorded change in*
35 *ownership for which either a change in ownership statement, as*
36 *required by Section 480, or a preliminary change in ownership*
37 *report, as required by Section 480.3, is not timely filed with*
38 *respect to the event giving rise to the escape assessment or*
39 *underassessment shall be made within eight years after July 1 of*
40 *the assessment year in which the property escaped taxation or*

1 was underassessed. For purposes of this paragraph, an
2 “unrecorded change in ownership” means a deed or other
3 document evidencing a change in ownership that was not filed
4 with the county recorder’s office at the time the event took place.

5 (3) Notwithstanding paragraphs (1) and (2), in the case where
6 property has escaped taxation, in whole or in part, or has been
7 underassessed, following a change in ownership or change in
8 control and either the penalty provided for in Section 503 must
9 be added or a change in ownership statement, as required by
10 Section 480.1 or 480.2 was not filed *timely* with respect to the
11 event giving rise to the escape assessment or underassessment, an
12 escape assessment shall be made for each year in which the
13 property escaped taxation or was underassessed.

14 (4) *For purposes of this subdivision, “timely” means 45 days*
15 *from the date of a written request by the State Board of*
16 *Equalization.*

17 (c) For purposes of this section, “assessment year” means the
18 period defined in Section 118.

19 *SEC. 5. This act is an urgency statute necessary for the*
20 *immediate preservation of the public peace, health, or safety*
21 *within the meaning of Article IV of the Constitution and shall go*
22 *into immediate effect. The facts constituting the necessity are:*

23 *In order to ensure that this act applies to property assessments*
24 *for the 2006-07 fiscal year as soon as possible, it is necessary*
25 *that this act take effect immediately.*

26 ~~SECTION 1. Section 15604 of the Government Code is~~
27 ~~amended to read:~~

28 ~~15604. (a) The board may appoint its executive officer and~~
29 ~~prescribe and enforce his or her duties. The executive officer~~
30 ~~shall hold office at the pleasure of the board and shall receive~~
31 ~~compensation as prescribed by the board.~~

32 ~~(b) The board may employ expert and clerical assistants as it~~
33 ~~deems necessary in the performance of its powers and duties.~~
34 ~~However, the board members shall not participate in the~~
35 ~~personnel process, except for (1) hiring that is at or above the~~
36 ~~level of career executive appointment or district administrator, or~~
37 ~~hiring immediate staff; (2) legal matters coming before the board~~

- 1 ~~in connection with personnel; and (3) as otherwise necessary to~~
- 2 ~~discharge its duties derived from the California Constitution.~~

O